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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**
13 **AT YAKIMA**

14 ENRIQUE JEVONS as managing
15 member of Jevons Properties LLC,
16 et al.,

17 Plaintiffs,

18 v.

19 JAY INSLEE, in his official
20 capacity as the Governor of the
21 State of Washington, et al.,

22 Defendants.

NO. 1:20-cv-03182-SAB

ANSWER TO COMPLAINT

GENERAL DENIALS

Defendants Jay Inslee, in his official capacity as Governor of the State of Washington, and Robert Ferguson, in his official capacity as Attorney General of the State of Washington, by and through their attorneys, Attorney General Robert W. Ferguson; Assistant Attorney General Zachary Pekelis Jones; Deputy Solicitor General Jeffrey T. Even; and Assistant Attorney General

1 Brian H. Rowe, hereby answer Plaintiffs' Complaint (Complaint). Except as
 2 herein expressly admitted or qualified, Defendants deny each and every
 3 allegation, statement, or charge contained in the Complaint, and deny that
 4 Plaintiffs are entitled to any of the relief requested.

5 The coronavirus disease 2019 (COVID-19) pandemic is an unprecedented
 6 state, national, and international emergency that requires an unprecedented
 7 governmental response to protect public health. The emergency orders issued by
 8 the Governor of Washington, like similar orders issued by numerous national,
 9 state, regional, and local governments around the world, currently represent the
 10 best mechanism to mitigate the spread of COVID-19. Specifically,
 11 Proclamation 20-19 (including its amendatory proclamations) is a lawful exercise
 12 of the Governor's emergency powers that infringes none of Plaintiffs'
 13 constitutional rights. Defendants respond to the numbered allegations in the
 14 Complaint as follows:

15 **INTRODUCTION**

16 1. Defendants admit that Governor Jay Inslee issued emergency
 17 Proclamations 20-19 through 20-19.4 in response to the COVID-19 pandemic.
 18 Defendants deny Plaintiffs' characterizations of these emergency Proclamations,
 19 the text of which speaks for itself. The second sentence of Paragraph 1 contains
 20 legal conclusions or argument, to which no response is required. Defendants are
 21 without information sufficient to form a belief as to the truth of the other
 22

1 allegations in Paragraph 1, and therefore deny the same. To the extent a further
2 response is required, Defendants deny the remainder of Paragraph 1.

3 2. Defendants deny Plaintiffs' characterization of the Proclamations,
4 the text of which speaks for itself. Paragraph 2 contains legal conclusions or
5 argument, to which no response is required. Defendants are without information
6 sufficient to form a belief as to the truth of the factual allegations in Paragraph 2,
7 and therefore deny the same. To the extent a further response is required,
8 Defendants deny the remainder of Paragraph 2.

9 3. Defendants deny Plaintiffs' characterization of the Proclamations,
10 the text of which speaks for itself. Paragraph 3 asserts legal conclusions to which
11 no response is required. To the extent a further response is required, Paragraph 3
12 is denied.

13 4. Defendants are without information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 4, and therefore deny the same.

15 5. Paragraph 5 asserts legal conclusions to which no response is
16 required. To the extent a response is required, Paragraph 5 is denied.

17 **JURISDICTION AND VENUE**

18 6. Paragraph 6 asserts legal conclusions to which no response is
19 required. To the extent a response is required, Paragraph 6 is denied.

20 7. Defendants admit that venue is proper in this judicial district. To the
21 extent a further response is required, the remainder of Paragraph 7 is denied.
22

PARTIES

8. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and therefore deny the same.

9. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and therefore deny the same.

10. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore deny the same.

11. Defendants admit that Governor Jay Inslee is the Governor of the State of Washington, that he is being sued in his official capacity, and that he issued the Proclamations in question. The other allegations in Paragraph 11 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 11 is denied.

12. Defendants admit that Attorney General Robert Ferguson is the Attorney General of the State of Washington and that he is being sued in his official capacity. The other allegations in Paragraph 12 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 12 is denied.

STANDING

13. Paragraph 13 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 13 is denied.

14. Paragraph 14 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 14 is denied.

FACTUAL ALLEGATIONS

A. Plaintiffs and their Property

15. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore deny the same.

16. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore deny the same.

17. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore deny the same.

18. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and therefore deny the same.

B. The Outbreak of COVID-19

19. Defendants admit that Governor Jay Inslee issued emergency Proclamations in response to the novel COVID-19 pandemic, and that the pandemic has had significant, negative, and global economic effects, and affected the lives of all or virtually all Americans. As to the other allegations in Paragraph 19, they are legal conclusions to which no response is required, or Defendants are without information sufficient to form a belief as to their truth, and therefore deny them.

20. Defendants admit that on February 29, 2020, Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in response to the COVID-19 global pandemic, and that on March 23, 2020, Governor Jay Inslee issued Proclamation 20-25, “Stay Home – Stay Healthy.” Defendants deny that

the other phrases quoted in Paragraph 20 appear in Proclamation 20-25 and otherwise deny Plaintiffs' characterization of the Proclamations.

C. The Governor's Eviction-Related Proclamations

21. Defendants admit that on March 18, 2020, Governor Jay Inslee issued Proclamation 20-19, Evictions, amending Proclamation 20-05. Defendants admit that the Proclamation stated that it was to remain in effect until April 17, 2020. The text of the Proclamation speaks for itself. The other allegations in Paragraph 21 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 21 is denied.

22. Defendants admit that on April 16, 2020, Governor Jay Inslee issued Proclamation 20-19.1, Evictions, amending and extending Proclamation 20-19. Defendants admit that the Proclamation stated that it was to remain in effect until June 4, 2020. The text of the Proclamation speaks for itself. The other allegations in Paragraph 22 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 22 is denied.

a. The allegations in Paragraph 22.a are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 22.a is denied.

b. The allegations in Paragraph 22.b are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 22.b is denied.

23. Defendants admit that on June 2, 2020, Governor Jay Inslee issued Proclamation 20-19.2, Evictions, extending and amending Proclamation 20-19. Defendants admit that the Proclamation stated that it was to remain in effect until August 1, 2020. Defendants admit that on July 24, 2020, Governor Jay Inslee issued Proclamation 20-19.3, Evictions, extending and amending Proclamation 20-19. Defendants admit that the Proclamation stated that it was to remain in effect until October 15, 2020. Defendants admit that on October 14, 2020, Governor Jay Inslee issued Proclamation 20-19.4, Evictions, extending and amending Proclamation 20-19. Defendants admit that the Proclamation stated that it was to remain in effect until December 31, 2020. Defendants admit that a copy of Proclamation 20-19.4 is attached to Plaintiffs' Complaint as Appendix A. The text of the Proclamation speaks for itself. The other allegations in Paragraph 23 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 23 is denied.

24. The allegations in Paragraph 24 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 24 is denied.

25. The allegations in Paragraph 25 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 25 is denied.

1 26. The allegations in Paragraph 26 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 26 is
3 denied.

4 27. The allegations in Paragraph 27 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 27 is
6 denied.

7 28. The allegations in Paragraph 28 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 28 is
9 denied.

10 29. The allegations in Paragraph 29 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 29 is
12 denied.

13 30. The allegations in Paragraph 30 are legal conclusions to which no
14 response is required. To the extent a further response is required, Paragraph 30 is
15 denied.

16 31. The allegations in Paragraph 31 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 31 is
18 denied.

19 32. The allegations in Paragraph 32(a)-(d) are legal conclusions to
20 which no response is required. To the extent a response is required, Paragraph 32
21 is denied.
22

FIRST CLAIM FOR RELIEF

**Violation of the Contracts Clause, Art. 1. § 10 of the United States
Constitution (Declaratory Relief Under 42 U.S.C. § 1983)**

33. Defendants incorporate by reference the preceding responses to each enumerated paragraph. To the extent a further response is required, Paragraph 33 is denied.

34. The allegations in Paragraph 34 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 34 is denied.

35. The allegations in Paragraph 35 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 35 is denied.

36. The allegations in Paragraph 36 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 36 is denied.

37. The allegations in Paragraph 37 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 37 is denied.

38. The allegations in Paragraph 38 are legal conclusions to which no response is required. To the extent a further response is required, Paragraph 38 is denied.

1 39. The allegations in Paragraph 39 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 39 is
3 denied.

4 40. The allegations in Paragraph 40 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 40 is
6 denied.

7 41. The allegations in Paragraph 41 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 41 is
9 denied.

10 42. The allegations in Paragraph 42 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 42 is
12 denied.

13 43. The allegations in Paragraph 43 are legal conclusions to which no
14 response is required. To the extent a further response is required, Paragraph 43 is
15 denied.

16 44. The allegations in Paragraph 44 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 44 is
18 denied.

19 45. The allegations in Paragraph 45 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 45 is
21 denied.
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1 46. The allegations in Paragraph 46 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 46 is
3 denied.

4 47. The allegations in Paragraph 47 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 47 is
6 denied.

7 48. The allegations in Paragraph 48 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 48 is
9 denied.

10 49. The allegations in Paragraph 49 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 49 is
12 denied.

13 50. The allegations in Paragraph 50 are legal conclusions to which no
14 response is required. To the extent a further response is required, Paragraph 50 is
15 denied.

16 51. The allegations in Paragraph 51 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 51 is
18 denied.

19 52. The allegations in Paragraph 52 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 52 is
21 denied.
22

1 53. The allegations in Paragraph 53 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 53 is
3 denied.

4 54. The allegations in Paragraph 54 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 54 is
6 denied.

7 55. The allegations in Paragraph 55 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 55 is
9 denied.

10 **SECOND CLAIM FOR RELIEF**

11 **Violation of the Contracts Clause of Art. I, § 23 of the Washington**
12 **Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)**

13 56. Defendants incorporate by reference the preceding responses to each
14 enumerated paragraph. To the extent a further response is required, Paragraph 56
15 is denied.

16 57. The allegations in Paragraph 57 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 57 is
18 denied.

19 58. The allegations in Paragraph 58 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 58 is
21 denied.
22

1 59. The allegations in Paragraph 59 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 59 is
3 denied.

4 60. The allegations in Paragraph 60 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 60 is
6 denied.

7 61. The allegations in Paragraph 61 are legal conclusions to which no
8 response is required. To the extent a response is required, Paragraph 61 is denied.

9 **THIRD CLAIM FOR RELIEF**

10 **Violation of the Takings Clause of the Fifth Amendment to the United**
11 **States Constitution**
12 **(Declaratory relief under 42 U.S.C. § 1983)**

13 62. Defendants incorporate by reference the preceding responses to each
14 enumerated paragraph. To the extent a further response is required, Paragraph 62
15 is denied.

16 63. The allegations in Paragraph 63 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 63 is
18 denied.

19 64. The allegations in Paragraph 64 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 64 is
21 denied.
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1 65. The allegations in Paragraph 65 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 65 is
3 denied.

4 66. The allegations in Paragraph 66 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 66 is
6 denied.

7 67. The allegations in Paragraph 67 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 67 is
9 denied.

10 68. The allegations in Paragraph 68 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 68 is
12 denied.

13 69. The Complaint omits Paragraph 69.

14 70. The allegations in Paragraph 70 are legal conclusions to which no
15 response is required. To the extent a further response is required, Paragraph 70 is
16 denied.

17 71. The allegations in Paragraph 71 are legal conclusions to which no
18 response is required. To the extent a further response is required, Paragraph 71 is
19 denied.

1 72. The allegations in Paragraph 72 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 72 is
3 denied.

4 **FOURTH CLAIM FOR RELIEF**

5 **Violation of the Takings Clause of Art. I, § 16 of the Washington**
6 **Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)**

7 73. Defendants incorporate by reference the preceding responses to each
8 enumerated paragraph. To the extent a further response is required, Paragraph 73
9 is denied.

10 74. The allegations in Paragraph 74 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 74 is
12 denied.

13 75. The allegations in Paragraph 75 are legal conclusions to which no
14 response is required. To the extent a further response is required, Paragraph 75 is
15 denied.

16 76. The allegations in Paragraph 76 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 76 is
18 denied.

19 77. The allegations in Paragraph 77 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 77 is
21 denied.
22

1 78. The allegations in Paragraph 78 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 78 is
3 denied.

4 79. The allegations in Paragraph 79 are legal conclusions to which no
5 response is required. To the extent a response is required, Paragraph 79 is denied.

6 **FIFTH CLAIM FOR RELIEF**

7 **Violation of the Due Process Clause of the Fourteenth Amendment**
8 **(Declaratory relief under 42 U.S.C. § 1983)**

9 80. Defendants incorporate by reference the preceding responses to each
10 enumerated paragraph. To the extent a further response is required, Paragraph 80
11 is denied.

12 81. The allegations in Paragraph 81 are legal conclusions to which no
13 response is required. To the extent a further response is required, Paragraph 81 is
14 denied.

15 82. The allegations in Paragraph 82 are legal conclusions to which no
16 response is required. To the extent a further response is required, Paragraph 82 is
17 denied.

18 83. The allegations in Paragraph 83 are legal conclusions to which no
19 response is required. To the extent a further response is required, Paragraph 83 is
20 denied.
21
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1 84. The allegations in Paragraph 84 are legal conclusions to which no
2 response is required. To the extent a further response is required, Paragraph 84 is
3 denied.

4 85. The allegations in Paragraph 85 are legal conclusions to which no
5 response is required. To the extent a further response is required, Paragraph 85 is
6 denied.

7 86. The allegations in Paragraph 86 are legal conclusions to which no
8 response is required. To the extent a further response is required, Paragraph 86 is
9 denied.

10 87. The allegations in Paragraph 87 are legal conclusions to which no
11 response is required. To the extent a further response is required, Paragraph 87 is
12 denied.

13 88. The allegations in Paragraph 88 are legal conclusions to which no
14 response is required. To the extent a further response is required, Paragraph 88 is
15 denied.

16 89. The allegations in Paragraph 89 are legal conclusions to which no
17 response is required. To the extent a further response is required, Paragraph 89 is
18 denied.

19 90. The allegations in Paragraph 90 are legal conclusions to which no
20 response is required. To the extent a further response is required, Paragraph 90 is
21 denied.
22

REQUESTED RELIEF

Paragraphs 1–4 assert Plaintiffs’ requested relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

AFFIRMATIVE DEFENSES

Defendants’ affirmative defenses to the Complaint are set forth below. By setting forth the following defenses, Defendants do not assume burden of proof on the matter and issue other than those on which he has the burden of proof as a matter of law. Defendants reserve the right to supplement these defenses.

1. Defendants are immune from suit under the Eleventh Amendment to the U.S. Constitution.
2. Defendants are entitled to qualified immunity.
3. Plaintiffs have failed to exhaust administrative remedies.
4. Plaintiffs lack standing.
5. Plaintiffs’ claims are moot.
6. Plaintiffs’ claims are unripe.
7. This case is non-justiciable.
8. This Court lacks subject matter jurisdiction.
9. Plaintiffs have failed to state a claim upon which relief may be granted.
10. Plaintiffs have failed to join necessary parties.
11. Abstention doctrines warrant a stay or dismissal of the case.

1 12. The challenged Proclamations have a real and substantial relation to
2 the COVID-19 public health crisis and is not a plain, palpable invasion of
3 Plaintiffs' rights.

4 13. The Proclamations are narrowly tailored to advance a compelling
5 governmental interest.

6 14. The Proclamations reasonably and appropriately further the
7 legitimate and significant goal of combatting the COVID-19 pandemic.

8 15. The Proclamations are appropriate uses of the State's police power
9 to protect public health and welfare.

10 16. The Proclamations are appropriate uses of the emergency powers of
11 the Governor.

12 **DEFENDANTS' REQUEST FOR RELIEF**

13 Wherefore, Defendants pray that the Court:

- 14 1. Dismiss Plaintiffs' Complaint with prejudice;
15 2. Deny all relief Plaintiffs request;
16 3. Grant Defendants their costs and reasonable attorneys' fees; and,
17 4. Grant Defendants such other and further relief as the Court may
18 deem just and proper.

19 DATED this 25th day of November 2020.
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21
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1 ROBERT W. FERGUSON
2 Attorney General

3 /s/ Brian H. Rowe

4 ZACHARY PEKELIS JONES, WSBA #44557

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15 *Attorneys for Defendants*

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 25th day of November 2020, at Seattle, Washington.

/s/ Brian H. Rowe
BRIAN H. ROWE, WSBA #56817
Assistant Attorney General